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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.780 OF 1988

Jalinder Devidas Shinde, aged about 28 years, Occupation) Agriculturist, resident of) Nagewadi, Taluka Khanapur,) District Sangli.) ... Appellant (Orig. Accused.)

Versus

The State of Maharashtra.) ... Respondents

Mr. Arfan Sait, advocate appointed for the appellant-accused.

Mr. D.S. Mhaispurkar, A.P.P. for the respondent-State.

CORAM: SMT. RANJANA DESAI &
A.S. OKA, JJ.

DATED: 4TH OCTOBER, 2004.

ORAL JUDGMENT:- (**Per Smt. Ranjana Desai, J.**)

1. The appellant (for convenience, "the accused") was tried in the Court of the Additional Sessions Judge, Satara at Satara in Sessions Case No.29 of 1988 for the offences punishable under sections 452 and 302 of the Indian Penal Code (for short, "the IPC"). By the judgment and order dated 5/8/1988, the learned Sessions Judge found the accused guilty of offences punishable under sections 452 and 302 of the IPC. He convicted the accused of the offence under section 302 of the IPC and sentenced him to suffer imprisonment for life. For offence under section 452 of the IPC, the accused was sentenced to suffer R.I. for one year and to pay a fine

of Rs.300/- in default to suffer R.I. for one month.

Both the sentences were ordered to run concurrently.

2. Being aggrieved by the said order and judgment, the accused has approached this court.

3. At the trial, the case of the prosecution was as follows. Deceased Dhula Namdeo Satpute was the husband of PW-2 Anjirabai Satpute. PW-10 Muktabai Satpute is the complainant. Her daughter Sunita was married to the accused. The deceased Dhula was her brother in law. His daughter Sangita was married on 12/11/1987 to one Anandrao Rajge. The deceased sent PW-10 Muktabai Satpute's daughter Sangita with Sunita to her matrimonial house after the marriage. This was done without the consent of the accused.

4. It is the case of the prosecution that the accused was annoyed because of this. On the day of the incident, the deceased was in his house along with his wife PW-2 Anjirabai Satpute. PW-2 Anjirabai Satpute served food to the deceased at 7.30 p.m. The deceased was sitting towards southern side while he was taking food. PW-2 Anjirabai Satpute was sitting near the fire place. The accused, all of a sudden, entered the house of the deceased armed with a stick. He asked the deceased as to why his wife - Sangita was sent along with Sunita, without his consent. The accused gave two strokes of stick on the head of the deceased. PW-2 Anjirabai

Satpute went ahead. The accused raised a stick in order to beat her. The stroke fell on the left thumb of her hand. PW-2 Anjirabai Satpute started shouting loudly. The accused ran away with the stick in his hand. On account of cries raised by PW-2 Anjirabai Satpute, PW-4 Jalandhar Nalawade, PW-6 Anjana Pawar and PW-11 Ramchandra Satpute came there. PW-2 Anjirabai Satpute sent Balabai to call PW-10 Muktabai Satpute. PW-10 Muktabai Satpute came to the house within five to ten minutes. PW-2 Anjirabai Satpute told PW-10 Muktabai Satpute what had happened. PW-11 Ramchandra Satpute and PW-10 Muktabai Satpute shifted the deceased to the government dispensary at Masur. From there, he was taken to Cottage Hospital, Karad. From Kottage Hospital, he was shifted to Civil Hospital, Satara. From there, he was shifted to Sassoon Hospital, Pune. The deceased succumbed to his injuries on 18/11/1987. In the meantime, PW-10 Muktabai Satpute lodged her complaint at 15.30 hours on 16/11/1987 on the basis of which investigation was started. The accused came to be arrested. After completion of the investigation, the accused came to be charged as aforesaid.

5. In support of its case, the prosecution examined as many as 15 witnesses. The prosecution story basically rests on the evidence of eye-witness PW-2 Anjirabai Satpute. PW-10 Muktabai Satpute, PW-4 Jalinder Nalawade, PW-6 Anjana Pawar and PW-11 Ramchandra Satpute have sought to corroborate PW-2 Anjirabai Satpute’s evidence.

PW-10 Muktabai Satpute is the complainant. The medical evidence comprises evidence of PW-3 Dr. Avinash Lokhande, PW-5 Dr. Lakshminath Bade, who had conducted post mortem on the corpse of the deceased, PW-7 Dr. Indrajit Mohite, PW-8 Dr. Anantrao Patil and PW-12 Rajiv Joshi. The details of the investigation have been given by PW-14 Shivaji Bhosale, Police Head Constable and PW-15 Laxman Shejal, Police Sub-Inspector, Umbraj Police Station.

6. The defence of the accused was one of denial. He contended that he was falsely implicated on account of enmity. After perusing the evidence on record, the learned Sessions Judge accepted the prosecution story in its entirety and convicted the accused. Hence, this appeal.

7. We have heard Mr. Arfan Sait, the advocate appointed to appear for the appellant/accused, and Mr. Mhaispurkar, learned A.P.P. appearing for the State.

8. Mr. Sait, the learned counsel for the accused contended that the trial court erred in convicting the accused. He submitted that PW-2 Anjirabai Satpute's evidence ought not to have been relied upon because PW-2 Anjirabai Satpute's conduct is unnatural. Though the incident is said to have been taken place on 15/11/1987 at about 7.30 p.m., PW-2 Anjirabai Satpute has not lodged the FIR. The FIR came to be lodged by PW-10 Muktabai

Satpute on 16/11/1987 at about 15.30 hours. The fact that PW-2 Anjirabai Satpute did not approach the police immediately though her husband was seriously injured, creates doubt about her credibility. He submitted that PW-2 Anjirabai Satpute is an interested witness and considering the admitted enmity, her evidence will have to be scrutinised cautiously. The learned Judge has failed to do so. The learned counsel further urged that the prosecution has examined all interested witnesses. Not a single independent witness has been examined in support of the prosecution case. He further submitted that the learned Sessions Judge ought to have ignored the extra judicial confession made by PW-13 Mohan More as he has turned hostile. Mr. Sait also urged that the recovery of stick also does not inspire confidence. In any event, submitted Mr. Sait even if the prosecution story is accepted, the offence under section 302 of the IPC is not at all attracted to the facts of the present case. The intention to murder cannot be attributed to the accused. At best, the accused could be convicted under section 304 (Part II) of the IPC.

9. As against this, Mr. Mhaispurkar, the learned A.P.P. contended that the trial court judgment is well reasoned. PW-2 Anjirabai Satpute's evidence inspires confidence. PW-2 Anjirabai Satpute being the wife of the deceased has no reason to implicate anyone else. Necessary corroboration to PW-2 Anjirabai Satpute's evidence is found in the evidence of the neighbours. Recovery of

stick at the instance of the accused also supports the prosecution case. Therefore, according to the learned A.P.P., the order of conviction and sentence deserves to be maintained.

10. We have given our anxious consideration to the submissions advanced by both sides. In our opinion, the evidence of PW-2 Anjirabai Satpute has rightly been relied upon by the prosecution. Admittedly, the relations between the deceased and the accused and PW-10 Muktabai Satpute were strained. PW-10 Muktabai Satpute is his mother-in-law and the accused was suspecting her character. Similarly, he was also suspecting the character of his wife Sunita.

11. The aspect of strained relationship has not been challenged before us. In fact, in his statement under section 311 of the Criminal Procedure Code, the accused has accepted that he suspected his mother-in-law and his wife Sunita. He has also accepted that his wife had gone to her parents' place. His case is that on account of this strained relationship, he has been falsely implicated.

12. PW-2 Anjirabai Satpute has given a graphic account of the incident in question. She has stated that she served food to her husband at about 7.30 p.m. Her husband was sitting towards the southern side while he was taking food. A lantern was in front of him. She has

further stated that the accused came in armed with a stick and he gave two strokes of the stick on the head of her husband. She raised cries on account of which PW-4 Jalinder Nalawade, PW-6 Anjana Pawar and PW-11 Ramchandra Satpute rushed there. She sent Balabai to call PW-10 Muktabai. Accordingly, PW-10 Muktabai Satupte also came there. We find the evidence of this witness consistent. Being the wife of the deceased, she is the most natural witness. Her presence in the house can hardly be doubted. Mr. Sait, the learned counsel for the accused, contended that PW-2 Anjirabai Satpute has not lodged FIR immediately after the incident and, therefore, the prosecution story has become doubtful. We are not impressed by this submission for the simple reason that PW-2 Anjirabai Satpute has in her evidence stated that her children were sleeping in her house. In the nature of things, she must have been in a state of shock and, therefore, if she did not rush to lodge a complaint, she cannot be called an unreliable witness merely on account of that. Besides, in her evidence, PW-10 Muktabai has given explanation for this delay. PW-10 Muktabai has stated that Balutai the daughter of the deceased came to her and told her that the accused had beaten the deceased and that she should go to the house of the deceased. PW-10 Muktabai rushed to the house of the deceased. PW-2 Anjirabai Satpute told her that the accused had asked her husband as to why his wife was sent along with Sunita and at the same time he gave two blows of stick on the head of the deceased. The deceased was lying on the ground.

There was a bump on his head. PW-10 Muktabai has further stated that PW-6 Anjana Pawar, PW-4 Jalindar Nalawade and PW-11 Ramchandra Satpute were present in her house. PW-4 Jalinder Nalawade and PW-11 Ramchandra Satpute brought the deceased out of the house. They asked her son Yuvraj and Dilip Salunke to bring one rickshaw from Masur. Rickshaw was brought at about 8.45 p.m. to 9.00 p.m. The deceased was kept in the rickshaw. Then PW-10 Muktabai and PW-11 Ramchandra Satpute took the deceased to the primary health centre at Masur. They reached Masur at about 10.00 p.m. The doctor examined the deceased and advised that he should be taken to Cottage Hospital, Karad. Therefore, they took the deceased to Cottage Hospital, Karad, at about 11.30 p.m. The doctor examined the deceased. PW-10 Muktabai and PW-11 Ramchandra were in the hospital with the deceased till 2.00 p.m. Thereafter, on Monday, PW-10 Muktabai came to Masur and lodged an FIR at Masur Out Post.

13. In our opinion, since the condition of the deceased was deteriorating, time was spent by PW-10 Muktabai and others in shifting the deceased from one hospital to another. Nothing has come on record to show that this time was taken to make deliberation and for the purpose of concocting the prosecution story. We are satisfied with the explanation given by PW-10 Muktabai. In our opinion, therefore, the delay in lodging the FIR has no adverse impact on the prosecution story. It was argued that there is delay in recording the statements of the

witnesses. Since on account of the precarious condition of the deceased, PW-10 Muktabai could lodge FIR at 3.30 p.m. on 16/11/1987, there is bound to be some delay in recording statements. There is no merit in the submission that because of this delay, the prosecution story is discredited.

14. PW-6 Anjanabai, the neighbour of the deceased has stated that at about 7.30 p.m. she heard somebody saying in the deceased's house as to why his wife was sent with Sunita. She heard cries of PW-2 Anjirabai. She came out of her house. She saw the accused in front of the house of the deceased holding a stick in his hand. The deceased was lying on the floor. PW-10 Muktabai came there and PW-2 Anjirabai told her that the accused had given stick blows on the head of her husband. Mr. Mane has pointed out that this witness did not tell the police that she saw the accused in front of the deceased's house with a stick.

15. PW-4 Jalinder Satpute, another neighbour of the deceased has stated that at about 8.00 p.m. he was taking food in his house. He heard the accused saying why his wife was sent without his consent. Then he heard the sound of something being hit on the head of the deceased. He went to the house of the deceased. He saw the accused coming out of the house of the deceased. He had a stick in his hand. He ran towards southern side. According to this witness, he then entered the house of

the deceased. He saw the deceased lying on the ground. PW-10 Muktabai came there. PW-2 Anjirabai told Muktabai that the accused had beaten her husband with sticks. In his police statement, this witness has not stated that he heard some sound as something was hit on the head of the deceased. He did not tell the police that he saw the accused coming out of the house of the deceased. He did not tell the police that he had identified the deceased in the light of lantern.

16. PW-11 Ramchandra Satpute is the brother of the deceased. He has stated that after hearing cries of the deceased, he went to his house. He saw the accused coming from opposite direction with a stick. He ran towards the S.T. stand. Inside the house, he saw the deceased lying on the floor. PW-10 Muktabai came there. PW-2 Anjirabai told her that the accused had given a blow with a stick on the head of the deceased. Thereafter, he along with others took the deceased to the hospital. He has admitted that till 17/11/1987 he did not disclose to anybody that he saw the accused running. There are no major omissions in his evidence.

17. It is true that PW-6 Anjanabai and PW-4 Jalinder have not stated before the police that they saw the accused with a stick in his hand. The prosecution has also examined PW-13 Mohan More to establish that the accused had made extra-judicial confession to him. However, this witness has turned hostile. But even if

the evidence of PW-6 Anjanabai, PW-4 Jalinder and PW-13 Mohan More is left out of consideration, in our opinion, the conviction of the accused can be based on other evidence, particularly the evidence of PW-2 Anjirabai and PW-10 Muktabai.

18. At this stage, it is also necessary to see what is the medical evidence. PW-8 Dr. Anantrao Patil has examined the deceased at the primary health centre at Masur. Thereafter, the deceased was examined by PW-7 Dr. Indrajit Mohite at Cottage Hospital, Karad. As the condition of the deceased had considerably deteriorated, he was shifted to the Civil Hospital, Satara. PW-12 Dr. Rajiv Joshi examined the deceased at the Civil Hospital, Satara. Thereafter, the deceased was taken to Sassoon Hospital, Pune. PW-3 Dr. Avinash Lokhande examined the deceased at Sassoon Hospital. The deceased succumbed to his injuries on 11/11/1987 at about 9.55 p.m. PW-5 Dr. Lakshminath Bade did post-mortem on the corpse of the deceased. On external examination, PW-5 Dr. Bade found the following injuries.

> "1. Contusion on top of head on anterior fontanelle measuring 3" x 2" dark red in colour.
>
> 2. Abrasion in the centre of contusion measuring 1" x 1/2 with scab."

19. Dr. Bade has stated that these injuries were antimortem. When the stick, article 1, which is said to have been recovered at the instance of the accused, was shown to him, he has stated that the external injuries are possible by the blow of that stick if the blow is given with force. On internal examination, PW-5 Dr. Bade found the following injuries.

> "1. Haematoma, over both parietal and frontal region with swelling measuring 8" x 6" with blood clot.
>
> 2. Depressed fracture on top of skull involving both parietal bones and joining suture measuring 3" x 2".
>
> 3. Suture line fracture of left side of coronal future upto temporal bone.
>
> 4. Extra dural and sub-arachnoidal haemorrhage all over the brain."

According to him, all the internal injuries correspond to the external injuries 1 and 2.

20. According to PW-5 Dr. Bade, the death was caused

due to fracture of skull bones and intra cranial haemorrhage. Accordingly, he prepared the post-mortem notes, which are at Ex-24. Dr. Bade was shown the X-Ray of the deceased in the court. He stated that taking into consideration the depressed fracture and sutured line fracture, the blow of the stick must have been given with a great force. He also stated that the injuries mentioned in column No.19 of the post-mortem report are sufficient in the ordinary course of nature to cause death, even individually. In the cross-examination, when stick article 1 was shown to him, he has stated that it is light in weight. He also stated that by a single blow of stick dealt with force, depressed fracture and fracture of suture line are possible.

21. Once it is held on the basis of the evidence of PW-2 Anjirabai Satpute and PW-10 Muktabai Satpute that the accused, gave stick blows on the head of the deceased and the deceased succumbed to his injuries two days thereafter, the only question that needs to be examined is whether the accused is guilty of the offence under section 302 of the IPC as held by the trial court or whether he could be held guilty of a lesser offence. Mr. Sait, learned counsel for the accused contended that the intention to murder the deceased can never be attributed to the accused. He had only used the stick and at the spur of the moment in a fit of anger he gave a blow on the deceased, which undoubtedly proved to be fatal. The deceased died two days after the incident. The learned

counsel contended that if this court comes to a conclusion that the accused is guilty, he may be convicted for a lesser offence under section 304, Part II of the IPC.

22. Mr. Mhaispurkar, the learned A.P.P. for the State, however, vehemently contended that the prosecution has clearly made out its case of commission of an offence under section 302 of the IPC against the accused. The accused caused serious injuries on the head of the deceased which is a vital part of the body. Intention to murder must be attributed to the accused and the conviction and sentence passed by the trial court may not be disturbed. In support of his submission, the learned A.P.P. relied on the judgment of the Supreme Court in **State of U.P. vs. Virendra Prasad, 2004 All M.R. (Cri.) 850.**

23. We have given our anxious consideration to the submissions advanced by both sides. In our opinion, the prosecution has proved its case beyond reasonable doubt that the accused gave two blows on the head of the deceased. But, we are unable to concur with the trial court's view that the accused is guilty of murder. It is a fact that the wife of the accused had left him and was staying with her father. The deceased had sent her along with Sunita to her matrimonial house. This seems to have angered the accused. In a fit of anger, he barged into the house of the deceased with stick and gave two strokes

on the head of the deceased. PW-5 Dr. Bade has stated that the stick (article 1) is a light weight stick. If at all, the accused wanted to do away with the deceased, he would not have used such a light weight stick. Unfortunately, the attack on the head resulted in the death of the deceased. In the peculiar facts of the case, we are unable to come to the conclusion that the accused intended to commit murder of the deceased. In our opinion, the judgment in **Virendra Prasad's case (supra)** does not further the case of the prosecution. In that case, after considering the relevant provisions of the IPC, and after referring to the judgment of the Supreme Court in **Virsa Singh v. State of Punjab, AIR 1958 SC 465**, the Supreme Court has held that even if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary corse of nature, and did not extend to the intention of causing death, the offence would be murder. Here it cannot be said that the accused had the intention to inflict a bodily injury sufficient to cause death.

24. In the circumstances, in our opinion, the accused will have to be convicted under section 304 Part II of the IPC. The question is how much sentence should be imposed on him. It is apparent from his statement recorded under section 311 of the Code that the accused's wife is a lunatic. At the time when the statement under section 311 was recorded, the daughter of the accused was six month's old. She must be, by now, about 16 years of

her age. About 17 years are elapsed after the date of the incident. In such circumstances, in our opinion, sentence undergone by the accused should be treated as sentence for this offence but in addition to that, he should be sentenced to pay a fine and in default he must be sentenced to suffer suitable imprisonment. In our opinion, a fine of Rs.7,000/- and in default of payment of fine, simple imprisonment for one year will serve the interest of justice. If fine is paid, out of fine amount, a sum of Rs.5,000/- should be paid as compensation to PW-2 Anjirabai Satpute, the wife of the deceased and if she is not alive to her heirs. We find that the learned judge has also convicted the accused for offence punishable under section 452 of the IPC and sentenced him to suffer R.I. for one year and to pay a fine of Rs.300/- in default to sffer R.I. for one year. In our opinion, that conviction should be maintained. However, we feel that the sentence already undergone should be treated as sentence for the offence under section 452 of the IPC. Hence, we pass the following order:

O R D E R

"The conviction and sentence of the appellant/accused Jalinder Devidas Shinde under section 302 of the IPC is set aside. Instead, he is convicted under section 304 Part II of the IPC. Sentence undergone by

him shall be treated as sentence for that offence. In addition to that, he is sentenced for that offence to pay a fine of Rs.7,000/-. In default of payment of fine, he shall undergo simple imprisonment for one year. If the fine is paid, out of the fine amount, a sum of Rs.5,000/- should be paid as compensation to PW-2 Anjirabai Satpute, the wife of the deceased if she is alive and if she is not, it should be paid to PW-2 Anjirabai's heirs. The conviction and sentence of the accused under section 452 of the IPC is maintained. However, the sentence already undergone by the accused should be treated as sentence for the same. With this modification of the impugned order, the appeal is disposed of."

(SMT. RANJANA DESAI, J.)

(A.S. OKA, J.)